

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC M. ALBRITTON, §
§
Plaintiff §
§
v. § No. 6:08cv00089
§
CISCO SYSTEMS, INC. and RICHARD §
FRENKEL §
§
Defendants §

**ORDER REGARDING PLAINTIFF'S OBJECTIONS TO
DEFENDANT'S TRIAL EXHIBIT LIST**

On September 1, 2009, the Court conducted a pretrial conference regarding Plaintiff's remaining objections to Defendant's Trial Exhibit List. As to those Exhibits Defendant Expects to Use at Trial, and as stated fully on the record at the hearing, the Court rules as follows:

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
1	10/17/2007 Patent Troll Tracker Article (MSJ Exhibit No. F)	✓		
5	10/12/2007 Email from Eric M. Albritton to Amie J. Mathis Bates No. EMA 0862 (Mathis Deposition Exhibit No. 5)	✓		
6	10/15/2007 Email from Rhonda Lafitte to Amie J. Mathis Bates Nos. EMA 1492 – 1493 (Mathis Deposition Exhibit No. 6)	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
7	10/15/2007 Email from Amie J. Mathis to PMCANDREWS@Mcandrews-ip.com Bates No. EMA 1408 (Mathis Deposition Exhibit No. 7)			√
8	10/15/2007 Email from Amie Mathis to newcasetxk@txed.uscourts.gov Bates No. EMA 1407 (Mathis Deposition Exhibit No. 8)	√		
9	10/18/2007 Patent Troll Tracker Article	√		
10	10/16/2007 Email from paygovadmin@mail.doc.twai.gov to Amie J. Mathis Bates No. EMA 1564 (Mathis Deposition Exhibit No. 10)	√		
11	02/23/2008 Patent Troll Tracker Article “Blogger, Revealed” Bates Nos. FRENKEL.000062 - 000064	√		
13	10/16/2007 Email from Amie J. Mathis to PMCANDREWS@mcandrews-ip.com Bates Nos. EMA 1409 – 1411 (Mathis Deposition Exhibit No. 13)	√		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
14	03/14/2008 Email from Eric M. Albritton to Amie J. Mathis Bates Nos. EMA 0857 – 0858 (Mathis Deposition Exhibit No. 14)	✓		
15	10/17/2007 First Amended Complaint for Patent Infringment in ESN, LLC v. Cisco Systems, Inc., et al, C.A. No. 5:07-cv-156-DF-CMC Bates Nos. CISCO.000244 - 000250	✓		
16	10/17/2007 Email from PMCANDREWS@mcandrews-ip.com to Eric M. Albritton Bates Nos. EMA 1008 – 1009 (Mathis Deposition Exhibit No. 16)	✓		
17	01/30/2008 Email from Amie J. Mathis to Eric M. Albritton Bates Nos. EMA 1222 (Mathis Deposition Exhibit No. 17)	✓		
18	01/31/2008 Email from Amie J. Mathis to Shelley_Moore@txed.uscourts.gov v Bates Nos. EMA 1433 – 1434 (Mathis Deposition Exhibit No. 18)			✓
20	Number not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
21	10/15/2007 Notice of Electronic Filing Bates Nos. CISCO.000088 – 89 (Mathis Deposition Exhibit No. 21)	√		
21A	10/15/2007 Civil Cover Sheet in ESN, LLC v. Cisco Systems, Inc. et al Bates No. CISCO.000090 (Mathis Deposition Exhibit No. 21)	√		
21B	10/15/1007 Complaint for Patent Infringement in ESN, LLC v. Cisco Systems, Inc., et al Bates Nos. CISCO.000091 – 000164 (Mathis Deposition Exhibit No. 21)	√		
21C	10/15/2007 Civil Docket for Case #5:07-cv-00156-DF-CMC Bates Nos. CISCO.000240 – 000241 (Mathis Deposition Exhibit No. 21)	√		
22	10/16/2007 Patently O Bates Nos. CISCO.000002 – 000087 (Albritton Deposition Exhibit No. 22)	√ (with stipulated modifications)		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
23	10/16/2007 IP LAW 360 Bates Nos. FRENKEL2.000452 – 000456 (Albritton Deposition Exhibit No. 23)		√	
24	10/16/2007 Complaint for Patent Infringement, Civil Cover Sheet, and Docket Sheet in ESN LLC v. Cisco Systems, Inc., et al Bates Nos. CISCO.000165 – 000239 and CISCO.000242 – 000243 (Mathis Deposition Exhibit No. 24)		√	
25	10/16/2007 Email from Paul McAndrews to Amie J. Mathis, Eric M. Albritton, Pmcandrews@mcandrewsip.com ; twimbiscus@mcandrewsip.com; gmcandrews@mcandresip.com; pwmcandrews@mcandrewsip.co m Bates Nos. EMA 0941 – 0989 (Mathis Deposition Exhibit No. 25)		√	
26	10/16/2007 Email from Eric M. Albritton to T. John Ward, Jr. Bates No. EMA 0990 (Albritton Deposition Exhibit No. 26)		√	
27	Number not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
28	10/17/2007 Email from Johnny Ward to Eric M. Albritton Bates No. EMA 0991 - 0992 (Albritton Deposition Exhibit No. 28)	✓		
28A	Redlined First amended Complaint for Patent Infringement in ESN, LLC v. Cisco Systems, Inc., et al, C. A. No. 5:07-cv-156-DF-CMC Bates Nos. EMA 0993 - 0999	✓		
29	10/17/2007 Email from Amie J. Mathis to Eric M. Albritton Bates No. EMA 1005 (Mathis Deposition Exhibit No. 29)	✓		
30	10/17/2007 Email from Pete McAndrews to Amie J. Mathis Bates Nos. EMA 1006 – 1007 (McAndrews Deposition Exhibit No. 30)	✓		
31	10/17/2007 and 10/18/2007 Patent Troll Tracker Articles Bates Nos. CISCO.000001.1 – CISCO.000001.2 (Albritton Deposition Exhibit No. 31)			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
32	10/24/2007 Memorandum in Support of Defendant's Motion to Stay; 10/18/2007 Plaintiff's Motion to Enjoin Defendants Cisco and Linksys from Prosecuting Later-filed Parallel Litigation in Connecticut; 10/16/2007 Complaint for Declaration Judgment in <i>Cisco Systems, Inc. and Cisco-Linksys, LLC v. ESN, LLC</i> Bates Nos. CISCO.000272 – CISCO.000298 (Albritton Deposition Exhibit No. 32)			√
33 - 35	Numbers not used			
36	Email from PWCANDREWS@mcandrews-ip.com to Eric M. Albritton Bates Nos. EMA 1012 – 1019 (Albritton Deposition Exhibit No. 36)			√
37	02/25/2008 Email from Pete McAndrews to Eric M. Albritton Bates No. EMA 1363 (McAndrews Deposition Exhibit No. 37)	√		
38	Number not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
39	03/09/2008 Email from Pete McAndrews to Eric M. Albritton and T. John Ward, Jr. Bates No. EMA 1365 (Albritton Deposition Exhibit No. 39)	✓		
40 – 48	Numbers not used			
49	03/14/2008 Email from James Holmes to Michael C. Smith Bates No. EMA 1572 (Albritton Deposition Exhibit No. 49)		✓	
50 – 61	Numbers not used			
62	Information from Albritton Law Firm www.emafirm.com Bates Nos. JW.000129 – 000135 (Albritton Deposition Exhibit No. 62)	✓		
63	Information from lawyers.com regarding Albritton Law Firm Bates Nos. JW.000136 – 000137	✓		
64 – 80	Numbers not used			
81	03/17/2008 Texas Lawyer article entitled Patent Attorneys Sue Cisco systems, Blogger, Alleging Defamation Bates Nos. JW.000049 – 000051 (Maland Deposition Exhibit No. 81)	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
82 – 83	Numbers not used			
84	File folder entitled Albritton v. Cisco Emails (Maland Deposition Exhibit No. 84)			✓
85	10/15/2007 Email confirming opening shell case to Amie J. Mathis (Maland Deposition Exhibit No. 85)	✓		
86	10/18/2007 Email thread between Shelley Moore and David Maland (Maland Deposition Exhibit No. 86)	✓		
87	03/14/2008 Memorandum from David Maland to Ann K. McMillan, Managing Editor, Texas Lawyer and Brenda Jeffreys, Senior Reporter, Texas Lawyer (Maland Deposition Exhibit No. 87)	✓		
88	03/14/2008 Email from David Maland forwarding Memorandum to Raye Thompson, Shelley Moore and Rhonda Lafitte (Maland Deposition Exhibit No. 88)		✓	
89	03/14/2008 Email from David Maland forwarding Memorandum to Nick Patton and James Holmes (Maland Deposition Exhibit No. 89)		✓	

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
90	03/14/2008 Email from David Maland forwarding Memorandum to Craig Anderson at the Daily Journal (Maland Deposition Exhibit No. 90)		√	
91	03/17/2008 Email from David Maland forwarding Memorandum to Michael Smith (Maland Deposition Exhibit No. 91)		√	
92	03/19/2008 Email from David Maland forwarding Memorandum to Richard Schell (Maland Deposition Exhibit No. 92)			√
93	10/03/2008 Email thread between David Provines and the Help Desk (Maland Deposition Exhibit No. 93)	√		
94	10/03/2008 Email thread between David Provines and the Help Desk (Maland Deposition Exhibit No. 94)	√		
95	Number not used			
96	11/15/2006 How to Electronically File a New Case – Texas Eastern District Court (Revised November 15, 2006) (Maland Deposition Exhibit No. 96)	√		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
97	Number not used			
98	10/16/2007 Pay.gov receipt for filing complaint (Maland Deposition Exhibit No. 98)			✓
99	Docket Sheet for <i>ESN LLC v. Cisco Systems, Inc. et al</i> as of 10/01/2008 (Maland Deposition Exhibit No. 99)	✓		
100	03/13/2008 Email from Peggy Thompson to David Maland (Maland Deposition Exhibit No. 100)	✓		
101	Number not used			
102	10/01/2008 System Transactions for 1/1/1970 – 10/1/2008 (Maland Deposition Exhibit No. 102)	✓		
103 – 110	Numbers not used			
111	10/15/2007 Civil Docket for <i>ESN LLC v. Cisco Systems, Inc. et al</i> (Maland Deposition Exhibit No. 111)	✓		
112	08/20/2008 Email Thread between Eric Albritton and David Maland (Maland Deposition Exhibit No. 112)		✓	

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
113	09/17/2008 Email Thread between Eric M. Albritton and David Maland (Maland Deposition Exhibit No. 113)			✓
114	10/15/2007 Email thread between Amie J. Mathis and Rhonda Lafitte (Lafitte Deposition Exhibit No. 114)	✓		
115	10/18/2007 Email thread between Shelley Moore and David Maland (Moore Deposition Exhibit No. 115)	✓		
116	Number not used			
117	10/31/2008 printout of Civil Docket for <i>ESN LLC v. Cisco Systems, Inc. et al</i> (Wilson Deposition Exhibit No. 117)	✓		
118	10/03/2008 Email thread between David Provines and the Help Desk (Provines Deposition Exhibit No. 118)	✓		
119 – 122	Numbers not used			
123	04/07/2008 Letter to Mark Chandler from George P. McAndrews (McAndrews Deposition Exhibit No. 123)	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
124	10/15/2007 Email from Peter McAndrews to Eric M. Albritton Bates Nos. EMA 0863 – 0864 (McAndrews Deposition Exhibit No. 124)	✓		
125	10/15/2007 Email from Peter McAndrews to Eric M. Albritton Bates No. EMA 0865 (McAndrews Deposition Exhibit No. 125)	✓		
126	10/16/2007 Email thread between Peter McAndrews and Amie J. Mathis Bates Nos. EMA 0938 - 0940 (McAndrews Deposition Exhibit No. 126)			✓
127	10/17/2007 Email thread between Peter McAndrews and Eric M. Albritton Bates Nos. EMA 1010 - 1011 (McAndrews Deposition Exhibit No. 127)	✓		
128	10/18/2007 Email thread between Paul McAndrews, Eric M. Albritton, TWIMBISCUS@mcandrews-ip.com, T. John Ward, Jr. and Jason A. Saunders Bates Nos. EMA 1023 – 1024 (McAndrews Deposition Exhibit No. 128)			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
129 - 130	Numbers not used			
131	10/17/2007 Email thread between Peter McAndrews and Eric M. Albritton Bates Nos. EMA 1516 – 1517 (McAndrews Deposition Exhibit No. 131)			✓
132 – 138	Numbers not used			
140	Number not used			
141	10/19/2007 Gmail from Michael Smith to Patent Troll Bates No. FRENKEL2.000003 (Smith Deposition Exhibit No. 141)	✓		
142	10/19/2007 Gmail from Michael Smith to Patent Troll Bates No. FRENKEL.000039			✓
143	Number not used			
144	10/29/2007 Gmail from Michael Smith to Patent Troll Bates Nos. FRENKEL2.000008 - 000009	✓		
145	10/19/2007 Gmail from Patent Troll to Michael Smith Bates Nos. FRENKEL2.000001 – 000002 (Smith Deposition Exhibit No. 145)			✓
147	Number not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
148	03/06/2008 Email from Michael C. Smith to Eric M. Albritton Bates No. EMA 1571 (Smith Deposition Exhibit No. 148)			✓
149	03/12/2008 "Troll Tracker defamation case" posted on E.D.Texweblog.com Bates Nos. CISCO.000380 – 000381 (Smith Deposition Exhibit No. 149)			✓
150	03/14/2008 Email from Michael C. Smith to T. John Ward, Jr. and Eric M. Albritton Bates No. EMA 1371 (Smith Deposition Exhibit No. 150)			✓
151 – 158	Numbers not used			
159	"They did WHAT with my filing? (Smith Deposition Exhibit No. 159)			✓
159A	03/14/2008 Email from James Holmes to Michael C. Smith (Smith Deposition Exhibit No. 159A)			✓
159B	03/14/2008 Email from Michael Smith to James Holmes (Smith Deposition Exhibit No. 159B)			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
159C	Article entitled "TrollTracker defamation case" (Smith Deposition Exhibit No. 159C)			✓
159D – 159H	Numbers not used			
159I	03/13/2008 Email from Michael C. Smith to David Maland (Smith Deposition Exhibit No. 159I)		✓	
159J	03/17/2008 Email thread between Michael C. Smith and David Maland (Smith Deposition Exhibit No. 159J)		✓	
159K	03/13/2008 Email thread between Michael C. smith, Thomas John Ward, Jr., Eric Albritton and Michael Barclay (Smith Deposition Exhibit No. 159K)		✓	
159L	03/13/2008 Email thread between Michael C. Smith and John Ward, Jr. (Smith Deposition Exhibit No. 159L)		✓	
159M	03/14/2008 Email from Michael C. Smith to John Ward, Jr. and Eric Albritton (Smith Deposition Exhibit No. 159M)	✓ with ordered redactions		
159N	Number not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
159O	03/17/2008 Email thread between Michael C. Smith and Michael Barclay (Smith Deposition Exhibit No. 159O)			✓
160	Number not used			
161	10/18/2007 Patent Troll Tracker Article (Smith Deposition Exhibit No. 161)	✓		
162	11/07/2007 Patent Troll Tracker Bates Nos. FRENKEL.000055 – 000061 (MSJ Exhibit No. L)	✓		
163	6/29/2008 Texarkana Gazette article entitled “Texarkana, Longview lawyers file lawsuit against California blogger saying he libeled them (MSJ Exhibit No. 23)	✓		
170	03/17/2008 Law.com article entitled “Patent Attorneys Sue Cisco and Blogging In-House Lawyer for Defamation” Bates Nos. JW.000079 – 000083 (MSJ Exhibit No. 31)	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
182	02/12/2008 Patent Troll Tracker articles entitled “\$432 Million Verdict in Marshall Texas Patent Case” and “Saffran v. Boston Scientific” Bates Nos. Frenkel2.000092 and 000093			✓
185	Civil Docket for Case #5:08-cv-00020-DF, ESN LLC v. Cisco Systems, Inc. et al Bates Nos. JW3.000044 – 000054	✓		
188	10/18/2007 Email from Michael Barclay to trolltracker@gmail.com Bates Nos. FRENKEL.000012 - 000016	✓		
189	10/18/2007 Email from jdslf jfslk to trolltracker@gmail.com Bates No. FRENKEL.00002	✓		
190	10/18/2007 Email from Anonymous to trolltracker@gmail.com Bates No. FRENKEL2.000027	✓		
191	10/17/2007 Email from Anonymous to trolltracker@gmail.com Bates No. FRENKEL.00001	✓		
193	03/12/2008 Patently O article entitled “Troll Tracker, Defamation, and Splitting the Bar” Bates JW.000010 – 000024	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
194	03/11/2008 The Prior Art article entitled "Troll Tracker sued: Judge Ward's son is one of the plaintiffs" Bates Nos. JW.000025 - 000027			✓
195	03/24/2008 Patently O article entitled "Patent Troll Tracker & Cisco's New Blog Policy" Bates Nos. JW.000035 – 000044			✓
196	03/12/2008 Peter Zura's 271 patent blog article entitled "Patent Troll Tracker Litigation Update" Bates Nos. JW.000045 – 000048			✓
197	03/12/2008 The Prior Art article entitled "Ward Jr. may have pursued Troll Tracker for months" Bates Nos. JW.000052 – 000058			✓
198	03/29/2008 The Prior Art article entitled "Troll Tracker lays low; Cisco puts the kibosh on anonymous blogging but stands by their man; I hang with Ninjas Bates Nos. JW.000059 -			✓
202	03/11/2008 Pete Zura's 271 Patent Blog article entitled "Troll Tracker Sued" Bates Nos. JW.000069 – 000072			✓
203	03/11/2008 The Legal Satyricon article entitled "Patent Troll Tracker Sued" Bates Nos. JW.000073 – 000076			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
204	03/11/2008 Robert Ambrogi's LawSites article entitled "Troll Tracker Sued for Libel" Bates Nos. JW.000077 – 000078			✓
205	03/17/2008 Law.com Article entitled "Patent Attorneys Sue Cisco and Blogging In-House Lawyer for Defamation Bates Nos. JW.000079 – JW.000083			✓
206	BUSLab article entitled "Cisco and 'troll tracker' sued by Texas attorneys' Bates No. JW.000084		✓	
207	TD Ameritrade article entitle "Cisco and the 'troll tracker' sued by Texas attorneys Bates Nos. JW.000085 - 000086		✓	
208	03/20/2008 MarketWatch article entitled "Cisco and 'troll tracker' sued by Texas attorneys" Bates Nos. JW.000087 – 000089		✓	
209	03/20/2008 The Prior Art article entitled "Rick Frenkel, Cisco to fight Troll Tracker defamation suits in East Texas" Bates Nos. JW.000090 – 000091			✓
210	03/13/2008 Patent Baristas article entitled "Troll Tracker Sued for Defamation by Lawyers" Bates Nos. JW.000092 – 000097			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
211	03/11/2008 Overlawyered article entitled "Watch What You Say About Lawyers Dep.: Troll Tracker blog sued out of existence" Bates No. JW.000109			✓
212	03/21/2008 Light Reading article entitled "Cisco Snared in Patent Blog Suits" Bates Nos. JW.000110 – 000112			✓
213	03/17/2008 Law.Com article entitled "Patent Attorneys Sue Cisco and Blogging In-House Lawyer for Defamation" Bates Nos. JW.000113 – 000115	✓		
214	03/17/2008 Texas Lawyer article entitled "Blogger who dissed EDTX to litigate there and WDAR" Bates No. JW.000116			✓
215	08/11/2008 Texas Lawyer article entitled "Patent Troll Tracker Blogger Leaves Cisco for Wilson Sonsini" Bates No. JW2.000175			✓
216	07/14/2008 IPLAW 360 article entitled "'Troll Tracker' Libel Case Now on Third Judge" Bates No. JW2.000173			✓
217	03/22/2008 Nota Bene article entitled "Texas attorney sues patent troll tracker and CISCO for defamation" Bates Nos. JW.000117 – JW.000122			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
218	03/19/2008 Best of the Law Blog article entitled "Cisco, Blogger Sued Over Post" Bates No. JW.000316			✓
219	03/13/2008 The Wall Street Journal article entitled "Revealed Patent Blogger, and Employer, Sued for Defamation" Bates Nos. JW.000126 – 000128	✓ with ordered redactions		
221	03/13/2008 Southeast Texas Record article entitled "Patent troll tracker sued for defamation" Bates Nos. JW.000123 – JW.000125		✓	
223	November 2008 The Third Branch, Vol. 40, Number 11, article entitled "Pacer Coming Into Its Own at 20" Bates Nos. CISCO4.000002 – 000003			✓
224	05/11/2007 Mcsmith.blogs.com article entitled "Now Which Holding Company Did I Leave That Darn Patent In?" Bates No. FgRENKEL2.000010			✓
226	10/28/2007 Gmail from Aaron Ross Feigelson to Patent Troll Bates Nos. FRENKEL2.000058			✓
227	Troll Tracker Sitemeter reports Bates Nos. FRENKEL2.000059 – 000072	✓		

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
228	Articles from the Patent Troll Tracker Blog Bates Nos. FRENKEL2.000150 – 152, FRENKEL2.000212 – 000214, FRENKEL2.000305 – 000311, FRENKEL2.000344 – 000347, FRENKEL2.000348 – 351, FRENKEL2.000368 – 000369. FRENKEL2.000421 – 000422	✓ with ordered redactions		
229	Legal Blog Watch article entitled “Tracking Lawyers’ Reactions to Unmasking of Troll Tracker” Bates Nos. JW.000062 – 00064			✓
230	03/14/2008 Email from Eric M. Albritton to Amie J. Mathis Bates No. EMA 0856	✓		
253	03/14/2008 Email from Amie J. Mathis to Eric M. Albritton Bates No. EMA 1396 – 1397	✓		
263	10/17/2007 Email from Rick Frenkel to Marta Beckwith, Mallun Yen, Michael Ritter, Mark Michels, Bart Showalter, Kurt Pankratz and John Corcoran Bates No. CISCO PRIVILEGED.000001 PRIVILEGED – OFFERED UNDER SEAL			✓

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
265	10/18/2007 Email from Rick Frenkel to Bart Showalter, Kurt Pankratz, Marta Beckwith, Mark Michels, Mallun Yen, Michael Ritter Bates No. CISCO PRIVILEGED.000004 PRIVILEGED – OFFERED UNDER SEAL			√
266	10/18/2007 Email from Kurt Pankratz to Rick Frenkel, Bart Showalter, Marta Beckwith, Mark Michels, Mallun Yen, Michael Ritter Bates No. CISCO PRIVILEGED.000005 PRIVILEGED – OFFERED UNDER SEAL			√
267	10/18/2007 Email from Kurt Pankratz to Rick Frenkel Bart Showalter, Marta Beckwith, Mark Michels, Mallun Yen, Michael Ritter Bates No. CISCO PRIVILEGED.000006 PRIVILEGED – OFFERED UNDER SEAL			√
268	10/22/2007 Email from Kurt Pankratz to Jillian Powell Bates Nos. CISCO PRIVILEGED.000007 – 000008 PRIVILEGED – OFFERED UNDER SEAL			√
269 – 270	Numbers not used			

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
271	10/15/2007 Email from Rick Frenkel to Kurt Pankratz, Bart Showalter, Marta Beckwith, Michael Ritter, Mallun Yen Bates Nos. CISCO PRIVILEGED.000019 – 000027 PRIVILEGED – OFFERED UNDER SEAL			√
272	10/18/2007 Email from Kurt Pankratz to Rick Frenkel, Bart Showalter, Marta Beckwith, Mark Michels, Mallun Yen, Michael Ritter Bates No. CISCO PRIVILEGED.000169 PRIVILEGED – OFFERED UNDER SEAL			√
273	Number not used			
274	10/16/2007 Email from Bart Showalter to Rick Frenkel, Kurt Pankratz, Marta Beckwith, Michael Ritter, Mallun Yen Bates Nos. CISCO PRIVILEGED.000276 – 000277 PRIVILEGED – OFFERED UNDER SEAL			√
275	Query results for cases in the U. S. District Court for the Eastern District of Texas in which Eric Albritton is listed as attorney of record Bates Nos. JW.000320 – 000342 and Frenkel2.000011 – 000020			√

Defendant Exhibit NO.	DESCRIPTION	Admitted	Objection Sustained/ Not Admitted	Withdrawn
276	December 28, 2006 to November 30, 2008 Docket Sheets and Complaints of cases in Eric Albritton is listed as an attorney of Record in the Eastern District of Texas Bates Nos. JW.000343 - JW.000586; JW.000596 - JW.000636; JW2.000179 - JW2.001254			✓
278	12/13/2008 Declaration of Sam Baxter (rebuttal evidence)			✓
279	11/19/2008 Draft Declaration of Sam Baxter (rebuttal evidence)			✓
280	11/26/2008 Affidavit of Sam Baxter (rebuttal evidence)			✓
282	Map of Texas Showing U. S. District Courts' Jurisdictions		✓	

Further, at the hearing Defendant **WITHDREW** the below exhibits which it had previously indicated it may use at trial:

2	4/2004 Electronic Case Files CM/ECF User Manual for the Eastern District of Texas (Revised April, 204) Bates Nos. JW2.000001 – 000058 (A. Mathis Deposition Exhibit No. 2)
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3	01/11/2008 The Attorney's "How To" Guide for Civil Case Opening – Texas Eastern District Court Bates Nos. JW2.000059 – 000078 (A. Mathis Deposition Exhibit No. 3)
12	03/14/2008 Memorandum from David Maland to Ann K. McMillan, Managing Editor, Texas Lawyer and Brenda Jeffreys, Senior Reporter, Texas Lawyer Bates Nos. EMA 0838 – 0855 (Mathis Deposition Exhibit No. 12)
19	10/15/2007 Civil Cover Sheet from ESN, LLC v. Cisco Systems, Inc. and Cisco LinkSys, LLC Bates No. EMA 0014 (Mathis Deposition Exhibit No. 19)
139	O'Connor's Texas Causes of Action 2008, Chapter 18-A, Liel & Slander Actions – Defamation (Smith Deposition Exhibit No. 139)
164	2006 U.S. Trans Lexis 29, Ebay Inc., et al v. Merceexchange, L.L.C. Supreme Court Transcript dated 3/29/2006 Bates Nos. JW.000642 - 000697 (MSJ Exhibit No. 25)
165	Winter 2007 State Bar of Texas Intellectual Property Law Section newsletter Bates Nos. JW.000741 – 000757 (MSJ Exhibit No. 26)

166	<p>08/18/2008 Texas Lawyer Article entitled “Eastern District Rocket Docket Decelerates in Marshall Division”</p> <p>Bates Nos. JW2.000176 - 000178</p> <p>(MSJ Exhibit No. 27)</p>
167	<p>02/20/2008 IP LAW 360 Article entitled “Rocket Dockets’ Gaining on Popular E. Texas Court”</p> <p>Bates Nos. CISCO2.000132 – 000134</p> <p>(MSJ Exhibit No. 28)</p>
168	<p>11/12/2007 The National Law Journal article entitled “East Texas Now Busiest Patent Litigation Venue”</p> <p>Bates No. CISCO2.000136</p> <p>(MSJ Exhibit No. 29)</p>
169	<p>03/15/2008 The American Lawyer on the Web article entitled “Taming Texas”</p> <p>Bates Nos. JW.000001 – 000009</p> <p>(MSJ Exhibit No. 30)</p>
171	<p>9 Yale J.L. & Tech. 1293 (2007) – Of Fire Ants and Claim Construction: An Empirical Study of the Meteoric Rise of The Eastern District of Texas as a Preeminent Forum for Patent Litigation</p> <p>Bates Nos. JW.000698 – 000738</p> <p>(MSJ Exhibit No. 32)</p>

172	<p>08/31/2007 Vinson & Elkins LLP Firm News “Eastern District of Texas Applied KSR v. Teleflex in Invalidating Patent”</p> <p>Bates Nos. JWS.000637 – 000641</p> <p>(MSJ Exhibit No. 33)</p>
173	<p>07/01/2006 Inside Counsel Article entitled “Small Town Attracts High Stakes in IP Case”</p> <p>Bates Nos. JW.000758 – 000760</p> <p>(MSJ Exhibit No. 34)</p>
174	<p>06/06/2006 Daily Record and the Kansas City Daily News-Press article entitled “IP Plaintiffs Flocking to Small Town of Marshall in Eastern Texas”</p> <p>Bates Nos. JW.000761 – 000765</p> <p>(MSJ Exhibit No. 35)</p>
175	<p>05/23/2008 Law.com article entitled “Will the 5th Circuit Ground an Eastern District of Texas Rocket Docket?”</p> <p>Bates Nos. JW.000789 – 000792</p> <p>(MSJ Exhibit No. 36)</p>
176	<p>05/23/2008 The Wall Street Journal article entitled “Volkswagen Lawyers Raise Challenge to Texas’s ‘Rocket Docket’”</p> <p>Bates Nos. JW.000793 – 000796</p> <p>(MSJ Exhibit No. 37)</p>

177	<p>04/16/2006 Austin American Statesman article entitled “A litigation boom”</p> <p>Bates Nos. JW.000810 – 000813</p> <p>(MSJ Exhibit No. 38)</p>
178	<p>23 Ohio St. J. on Disp. Resol. 345 (2008) article entitled “Saving Alternative Dispute Resolution in Patent Law: Countering the Effects of the Patent Troll Revolution”</p> <p>Bates Nos. JW.000766 – 000788</p> <p>(MSJ Exhibit No. 40)</p>
179	<p>November/December 2007 Intellectual Property article entitled “Status of Intellectual Property Reform Legislation in the Congress and How it May Affect How Banks Acquire and Enforce Patents”</p> <p>Bates Nos. JW.000797 – 000807</p> <p>(MSJ Exhibit No. 41)</p>
180	<p>10/07/2008 American Psychological Association “Stress in America”</p> <p>Bates Nos. JW3.000001 – 000019</p>
181	<p>Ten Tips for E-Filing Court Documents by Lauren Godfren</p> <p>Bates Nos. JW3.00020</p>
183	<p>Winter 2008 The Advocate article entitled “The Eastern District Phenomenon”</p> <p>Bates Nos. JW3.000026 – 000028</p>

184	The John Marshall Review of Intellectual Property Law, 6 J. Marshall Rev.Intell.Prop.L. 185 (2007), article entitled "Who is Really Undermining the Patent System – 'Patent Trolls' or Congress" by Raymond P. Niro Bates Nos. JW3.000029 – 000043
186	10/06/2008 BNA Legal & Business Edge brochure for "Using Today's Patent Law to Protect Tomorrow's Technology: New Litigation Strategies" Bates Nos. JW3.000055 – 000060
187	Eastern District of Texas Bar Association 12th Annual Bar Conference brochure for "The Right Side of Texas" Bates Nos. JW3.000061 - 000067
192	10/18/2007 Patent Troll Tracker Article (MSJ Exhibit No. K)
199	05/31/2008 Patent Brush Definitions and Law Enforcement Ideas by Thomas Rosch, Commissioner, Federal Trade Commission, Before the Newport Summit on Antitrust and Economics, Newport, RI Bates Nos. Frenkel3.000001 - 000014
200	03/11/2008 Legal Pad article entitled "Cisco: Nothin' to Say. Except, Don't Blame Us." Bates No. JW.000065
201	03/11/2008 Forbes.com article entitled "Shut Up, Already!" Bates No. JW.000066 – 000068
220	10/06/2008 Texas Lawyer Professional Announcement Bates Nos. JW2.000165 – 000167

222	Hunton & Williams article entitled "Patent Litigation in the Eastern District of Texas" Bates Nos. JW.000739 – 000740
225	03/04/2008 mail from Charles van Cleef to trolltracker@gmail.com Bates Nos. FRENKEL2.000056 – 000057
231	University of Missouri School of Law Profile of Dennis D Crouch Bates No. JW.000251
232	12/07/2007 General Order Appointing CJA Panel Members, In the United States District Court for the Eastern District of Texas Bates Nos. JW.000279 – 000307
233	02/27/2006 Tyler Paper.com article entitled "Two Winona Men Sentenced for Breaking Into Post Office Bates Nos. JW.000148 – 000150
234	06/02/2006 Tyler Paper.com article entitled "Drug-Ring Participant Gets 10 Years" Bates Nos. JW.000151 – 000152
235	08/02w/2007 The Southeast Texas Record article entitled "Recent patent/copyright infringement cases filed in U.S. District Court" Bates Nos. JW.000153 – 000154
236	06/02/2006 Tyler Paper.com article entitled "Man Admits He Planned to Sell Pound of Meth" Bates Nos. JW.000157 - 000159
237	06/02/2008 Tyler Paper.com article entitled "Two Sentenced for Meth Distribution Charges Bates Nos. JW.000160 – 000162
238	Mcsmith.blogs.com article entitled "\$24 million jury verdict in seat belt product liability case in Marshall" Bates No. JW.000194
239	02/13/2008 Bloomberg.com article entitled "Boston Scientific Loses \$431 Million Verdict on Stent" Bates Nos. JW.000173 – 000174

240	02/12/2008 The New York Times article entitled “Boston Scientific Loses Patent Trial” Bates Nos. JW.000175 – 000177
241	02/12/2008 International Herald Tribune article entitled “Jury rules against Boston Scientific in drug-coated stent patent lawsuit” Bates Nos. JW.000178 – 000179
242	02/13/2008 telegram.com article entitled “Loss in Boston Scientific suit” Bates Nos. JW.000230 – 000231
243	02/18/2008 Worcester Business Journal article entitled “BSX to Pay \$431M in Patent Dispute” Bates Nos. JW.000195 – 000196
244	02/12/2008 U.S. Law Blog article entitled “Saffran v. Boston Scientific” Bates Nos. JW.000185 – 000188
245	02/12/2008 SignOnSanDiego.com article entitled “Jury Orders Boston Scientific to pay \$431 million in stent patent dispute” Bates Nos. JW.000212 – 000214
246	02/12/2008 The MetroWest Daily News article entitled “Jury orders Boston Scientific to pay \$431M in patent dispute” Bates Nos. JW.000215 – 000216
247	02/12/2008 WFAA.com article entitled “Boston Scientific ordered to pay \$432M in stent patent dispute” Bates Nos. JW.000222 – 000224
248	02/12/2008 StarTribune.com article entitled “Boston Scientific told to pay \$431 million in stent patent case” Bates Nos. JW.000225 – 000229
249	02/13/2008 Legaltimes.com article entitled “Dickstein’s Patent Win” Bates No. JW.000189

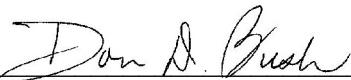
250	02/13/2008 ipadrblog.com article entitled “What is the Most Difficult time to Settle Your Patent Infringement Case? Right After a \$432 Million Verdict” Bates Nos. JW.000190 – 000191
251	02/13/2008 Law.com article entitled “Boston Scientific Ordered to Pay \$432 Million for Patent Infringement” Bates Nos. JW.000192 – 000193
252	02/13/2008 boston.com article entitled “Boston Scientific told to pay \$432m” Bates Nos. JW.000217 – 000218
254	05/20/2004 www.examiner.com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000203 – 000204
255	05/26/2008 www.news-journal.com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000232 – 000233
256	05/26/2008 News.moneycentral.msn.com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000205 – 000206
257	05/27/2008 Houston Chronicle article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000235 - 000237
258	05/27/2008 WFAA..com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000238 – 000241
259	05/27/2008 dentonrc.com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000245 – 000248
260	02/13/2008 journalgazette.net article entitled “Doctor wins \$432 million in stent patent suit” Bates Nos. JW.000219 – 000221

261	03/26/2008 American Intellectual Property Law Association Brief for Amicus Curiae in Support of Petitioners in In re Volkswagen AG and Volkswagen of American, Inc., No. 07-40058, in the U.S. Court of Appeals for the Fifth Circuit Bates Nos. JW2.000136 – 000164
262	05/23/2008 The Campaign Legal Center Weekly Reports Bates Nos. JW.000249 – 000250
277	Elpasotimes.com article entitled “Ark. Company wants to put legal squeeze on Smucker” Bates Nos. JW.000242 – 000244
281	Curriculum of Charles Herring

The parties are expected to act in good faith with regard to the Court's specific rulings as to redacted or limited use of exhibits as set forth fully on the record at the September 1, 2009 pretrial conference.

SO ORDERED.

SIGNED this 4th day of September, 2009.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE